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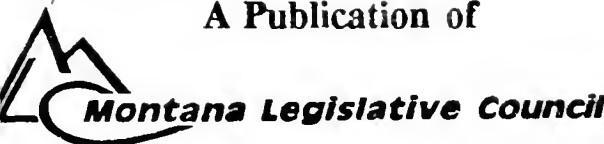
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## STATE HOUSING TASK FORCE

Task Force to Consider Housing Trust Fund...The State Housing Task Force met on June 6 to discuss the creation of a housing trust fund for the state. The purpose of the trust fund is to provide an on-going source of funding for the development of affordable housing in Montana. As a result of the discussion, the Task Force directed staff to draft a bill setting up the basic structure of a trust fund with the following elements:

- The trust fund will be administered by the Board of Housing. The Board's membership will be expanded to include representatives of different housing interest groups.
- Financial assistance from the trust fund will be available to low- and moderate-income households.
- Financial assistance will be in the form of loans, not grants.
- The purpose of the trust fund will be to provide gap financing for affordable housing projects.
- The trust fund will not duplicate any housing services currently being offered by either state or federal programs.
- Eligible applicants for trust fund assistance will include both public and private, for-profit and nonprofit entities.

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- Selection criteria, application procedures, and other administrative issues will be left to the discretion of the Board of Housing.

Task Force Discusses Revenue Sources for Trust Fund...The Task Force spent a good portion of the meeting discussing possible revenue sources for the trust fund. While some members thought a realty transfer tax was the most logical revenue source, other members opposed this tax because of its selectivity. Concern also was expressed that a realty transfer tax would ultimately raise the cost of housing because the tax would be passed on to the buyer.

Other sources of revenue considered by the Task Force included the bed tax, interest on real estate escrow accounts and tenant security deposits, deed recording fees, mineral taxes, a timber severance tax, special automobile license plates, Section 8 reserves, and the coal tax.

Because of the inability of the Task Force to agree on a funding source at this time, it was decided to draft a trust fund bill without an identified funding source. A decision on funding will be made at a later meeting. A subcommittee composed of five Task Force members will work with staff on the bill draft.

Task Force Hears From Housing Coalition...Judy Smith and Ren Essene of the Montana Housing Partnership addressed the Task Force about the work of the Partnership. The Montana Housing Partnership is made up of nonprofit advocacy and service groups that are looking at housing for those most in need. The Partnership has identified the following reasons for the current housing crisis: lack of available housing; substandard conditions of some available housing; rapid increase in rents; lack of land on which to build housing; and rental housing being sold or converted to condominiums. The Partnership has targeted the following areas for further work: tenant advocacy and protection; community education; equity financing mechanisms; and state delivery of present housing programs. The Partnership offered its assistance to the Task Force in supporting a housing trust fund.

Task Force to Meet in July...The Task Force will meet again on Monday, July 18 and will focus on the housing program delivery system, housing trust fund revenue, and regulatory barriers. George Axeland, administrator of the Wyoming Community Development Authority, will address the Task Force on the delivery of housing services in Wyoming.

## WATER POLICY COMMITTEE

Committee to Meet in August...The next Water Policy Committee meeting is scheduled for Thursday and Friday, August 18 and 19. On Thursday, the Committee will meet in Room 104 of the State Capitol and will focus on the Late Claims Study.

On Thursday evening, the Committee will travel again to the Big Hole River Basin for a public meeting regarding instream issues. The exact location of the meeting will be available by mid-July. The Committee will then complete its tour of the lower Big Hole River Basin on Friday, August 19. At its April meeting in Divide, the Committee was invited back to the Basin. The Committee's intent is to provide a forum for the continued discussion of this important issue and to foster the opportunity for local responses to dewatering problems.

Committee to Make Recommendations on Late Claims Study...At its May meeting, the Committee requested a brief review of the testimony received to date regarding the Late Claims Study, as well as a memo reviewing options for Study completion. The Committee is expected to make preliminary recommendations regarding the Late Claims Study at the August meeting to ensure an adequate opportunity for public involvement. Those interested individuals not on the Late Claims mailing list who would like a copy of the options memo should contact Committee staff.

Committee to Review Workplan...The Committee will also review a workplan update memo at the August meeting and identify those issues that require additional attention this interim.

For more information on these issues, please contact the EQC staff at 444-3742.

## ADMINISTRATIVE CODE COMMITTEE

Committee Meets on June 20...The Administrative Code Committee met on Monday, June 20. The Committee took action on a number of issues.

Committee Takes Action on Recently Adopted Rules...The Committee voted to inform the Board of Pharmacy that there is no statutory grant of rulemaking authority covering the Board's recently adopted rules regulating out-of-state mail order pharmaceuticals. The letter will include

a request that the Board and out-of-state pharmacies work together on a bill in the next regular legislative session that will grant rulemaking authority.

The Committee also voted to write the Board of Dentistry a letter stating that it is questionable whether the Board's recently adopted rules relating to the duties of dental hygienists and dental assistants were proposed and adopted in compliance with the Montana Administrative Procedure Act (MAPA), and to request that the Board work with the dentists and dental hygienists to reach a compromise on amendments to the rules that will satisfy both groups.

Committee Takes No Action on Building Codes...No action was taken on a Department of Commerce Building Codes Bureau rule providing that unless the garage or shed complies with the building codes, the owner of the garage or shed may only store personal items in the garage or shed and may not store items relating to the owner's business, even if the owner is or owns a business.

Committee Asks DHES to Revise Proposed Rules...Chapter 590, Laws of 1993, amended the laws regulating personal care facilities. The Department of Health and Environmental Sciences has proposed, as mandated by Chapter 590, rules regulating the facilities. The Committee voted to write the Department a letter stating that the proposed rules do not appear to follow the intent of the sponsor of Chapter 590, and to request the Department to meet with the concerned parties and work out mutually agreeable rules. The Committee also requested the Department to review the fees contained in the rules and ensure they are no higher than necessary to recoup, as mandated by law, the Department's costs in providing services to personal care facilities.

Committee to Request Amendment to MAPA...On the recommendation of staff attorney John MacMaster, the Committee voted to sponsor a bill amending MAPA to clarify that errors in proposal notice citations of rulemaking authority for and sections implemented by rules and statements of reasonable necessity may be cured in the adoption notice.

## SUBCOMMITTEE ON INSURANCE ISSUES

Subcommittee Hears From Insurance Commissioner's Office...The Subcommittee on Insurance issues held its fourth meeting on Friday, June 24. Frank Cote, Deputy Insurance Commissioner, reported that from a regulatory perspective, the medical malpractice climate in Montana is very good. The Insurance Commissioner's Office receives few, if any,

complaints about the availability or the affordability of medical malpractice insurance. The Office has actively recruited medical malpractice insurance companies to come into Montana. One new company was recently licensed and another has expressed interest in Montana. No insurance companies have left in recent years because of a poor climate.

Randy Nordquist, an actuary in the Insurance Commissioner's Office, addressed the Subcommittee about how insurance companies establish their medical malpractice rates. The purpose of ratemaking is to estimate future cost claims and then estimate the revenue needed to cover those future claims. Ratemaking is a very complex procedure that encompasses numerous factors, including investment income, expenses and profits, loss development, adjustment of premiums to current rate levels, allocated loss adjustment expenses, deductibles, inflation, judicial climate, and credibility of data. Once an insurance company determines the amount of revenue needed, the company decides how to distribute the revenue, in the form of rates, across the classes of medical specialties and then within each class. Legislative decisions also play a part in helping companies establish their rates, but are given no more weight than the other factors.

Committee Reviews Statutes and Rates From Other States...Staff reviewed medical malpractice provisions and medical malpractice insurance rates in Idaho, Wyoming, North Dakota, and South Dakota. Statutory provisions vary from state to state. Wyoming law contains few, if any, provisions regarding medical malpractice. The Wyoming Constitution prohibits caps on damages, and a prelitigation screening panel, similar to Montana's Medical Legal Panel, was overturned twice by the Wyoming Supreme Court. Idaho caps noneconomic damages at \$400,000; South Dakota caps all damages at \$1,000,000. This cap is currently under court challenge. Idaho has a prelitigation screening panel that is mandatory but nonbinding. Periodic payments are discretionary in Idaho and North Dakota, but are mandatory in South Dakota for damage awards over \$200,000. Collateral source reductions are mandatory in Idaho but discretionary in North Dakota and South Dakota. None of the states that were reviewed limit attorney fees.

Medical malpractice rates are the highest in Wyoming and the lowest in South Dakota. The major insurance carrier in Wyoming is The Doctors' Company. The Wyoming Medical Society acts as a third party administrator for The Doctors' Company. As a result, physicians who are members of the Medical Society and are insured by The Doctors' Company receive a 20 percent reduction in rates. The major carrier in South Dakota is St. Paul Fire and Marine. In the late 1980s, St. Paul Fire and Marine lost a lawsuit that resulted in a reduction in rates in those states where St. Paul Fire and Marine wrote medical malpractice insurance. In South Dakota, this resulted in a 25 percent reduction in rates in 1989. Since that time, St. Paul Fire and Marine has not raised rates in South Dakota. The rates in North Dakota and Idaho are

comparable to one another. In comparison to these other states, Montana's rates are slightly higher in some specialties and lower in others.

Staff concluded that it may be impossible to establish a direct link between a specific statutory provision and lower medical malpractice rates.

Subcommittee Hears Legislative Proposals...Interest groups presented proposals for legislation to the Subcommittee. The Doctors' Company and the Montana Medical Association presented separate proposals for caps on noneconomic damages, for amendments to the periodic payment statute, and for limits on attorney fees. The Montana Trial Lawyers' Association suggested changes to the Medical Legal Panel, some of which may be implemented by administrative rule. Other areas proposed for change by the Trial Lawyers are mandatory professional liability insurance for physicians and lawyers, cost controls on obtaining medical records, and requiring lawyers for both plaintiffs and defendants to report claims information to the Board of Medical Examiners.

Staff presented a request from Greg Petesch, Code Commissioner, to have the Subcommittee sponsor a bill amending the medical malpractice statute of limitations. There is a need to clarify the use of the term "plaintiff" and to address a court case regarding the application of the statute to claims other than medical malpractice but arising from a medical malpractice claim.

The Subcommittee asked staff to prepare bill drafts encompassing these proposals, as well as proposals submitted by Subcommittee members. Staff will then prepare a legislative package for Subcommittee consideration at its next meeting.

Date of Next Meeting to be Announced...Staff was instructed to select a date for the next meeting after consulting the Legislative Council's meeting schedule for the remainder of the summer.

## SUBCOMMITTEE ON WORKERS' COMPENSATION ALTERNATIVES

24-Hour Coverage Subcommittee Meets...The 24-Hour Coverage Subcommittee met on June 10 and heard a report from the Department of Revenue on revenues from the Old Fund unfunded liability tax. The Subcommittee also heard updates on administration fund assessments, managed care, interagency fraud coordination, the State Fund's automated

benefits system, the uninsured and underinsured programs, the workers' compensation database, and the safety program.

The 24-Hour Coverage Subcommittee reported that it had held a panel discussion on 24-hour coverage and concluded that it was premature for Montana to pursue at this time, but that states, such as Oregon, that are piloting programs should be observed to monitor their progress. The 24-Hour Coverage Subcommittee also requested information on the "opt-out" or nonsubscription policies in South Carolina, Texas, and New Jersey.

Full Subcommittee to Meet in July...The next meeting will be held on Friday, July 15, and Saturday, July 16, 1994. The meeting will be held in Room 104 of the Capitol in Helena and will begin at 8:00 a.m. on Friday. The Subcommittee will meet until the late afternoon and will conclude its business by Noon on Saturday.

## LEGISLATIVE AUDIT COMMITTEE

Audit Committee Meets...The Legislative Audit Committee met June 23 in Room 104 of the Capitol Building. The following reports were presented:

### ELECTRONIC DATA PROCESSING AUDITS:

#### The University of Montana

The EDP audit reviewed general controls over the University's Computing and Information Services (CIS) mainframe processing facility. The audit report discusses the findings regarding physical security, electronic access and organizational controls. The recommendations relate to disaster recovery, computer facility environment, offsite backup storage, programmer access to production datasets, and CIS-improved procedures for providing computing services to users.

#### Unemployment Insurance Applications, Department of Labor and Industry

An EDP audit was performed on two Department of Labor and Industry computerized applications. The applications reviewed were the Unemployment Insurance (UI) Contributions System and the UI Benefits System. The audit also reviewed computer general controls as they relate to the two applications. The report contains 14 recommendations which address:

- improving electronic access controls;

- establishing formal contingency procedures; and
- improving report distribution procedures.

#### FINANCIAL-COMPLIANCE AUDITS:

##### Department of Family Services

A financial-compliance audit of the Department of Family Services was performed for the two fiscal years ending June 30, 1993. The report contains 20 recommendations to the Department and one recommendation to the Governor's Office.

The recommendations to the Department include:

- establishing procedures to properly record activity on SBAS;
- obtaining inter-entity loans when appropriate and in compliance with state law;
- reconciling fund balances;
- monitoring of budgets;
- recording fixed assets;
- segregating duties;
- reconciling the foster care database to SBAS;
- proper use of non-treasury cash accounts;
- sub-recipient monitoring;
- determining eligibility of foster care recipients;
- calculation and collection of indirect costs; and
- compliance with state laws.

The recommendation to the Governor's Office relates to assigning a team of individuals from other state agencies to develop and ensure implementation of an effective management control system at the Department of Family Services.

An adverse opinion was issued on the financial schedules of the Department that indicates the accounting records are misleading and are not fairly presented.

##### Department of Commerce

This financial-compliance audit resulted in a qualified opinion on the financial schedules due to an error in recording the long-term liability for the State Fund payroll tax bonds. The report contains 13 recommendations to the Department including areas to improve compliance with state law. The prior audit report of the Department contained nine recommendations still applicable to the Department. Of those recommendations, the Department implemented seven, partially implemented one, and did not implement one.

Recommendations not fully implemented include preparing and distributing a county collections manual and compiling the financial statements of cities and towns.

#### Montana Single Audit Report

The biennial financial-compliance audit of the State of Montana's federal financial assistance programs was performed for the two fiscal years ending June 30, 1993. The Montana Single Audit Report contains a report on and a Schedule of Federal Financial Assistance for the two years ending June 30, 1993, required reports on internal controls and compliance pertaining to the state's federal financial assistance programs and general purpose financial statements, and all findings of noncompliance and questioned costs pertaining to federal financial assistance programs (identified during the financial-compliance audits of individual state agencies). The audit identified material management control weaknesses at the Department of Family Services and at the Department of Administration which affected the internal control reports. The audit also identified significant noncompliance with federal subrecipient monitoring requirements pertaining to the Department of Family Services' major (greater than \$3,000,000) and nonmajor (less than \$3,000,000) federal financial assistance programs. Total questioned costs related to the Department of Family Services issues included in the report were approximately \$24,000,000.

#### Department of Justice

A financial-compliance audit of the Department of Justice, including the Crime Control Division and the Highway Traffic Safety Division, was performed for the two fiscal years ending June 30, 1993. An unqualified opinion was issued on the financial schedules and eight recommendations were made, relating to compliance with state laws, proper recording of accounting information, and Law Enforcement Academy activities. The report also includes a disclosure issue concerning funding the Highway Patrol Officers' Retirement System.

#### Billings, Butte, Great Falls, Helena and Missoula Vocational-Technical Centers

Financial-compliance audits of the Billings, Butte, Great Falls, Helena, and Missoula Vocational-Technical Centers were performed for the two years ending June 30, 1993. The Legislative Auditor gave unqualified opinions on the financial schedules of the centers. In the report, 17 recommendations were made to center management and two recommendations to the Commissioner of Higher Education. The recommendations include nine related to compliance with state laws, six concerned with management of federal programs, and four focused on proper entries to the financial records.

**PERFORMANCE AUDIT:****Water Development and Renewable Resource Development Programs,  
Department of Natural Resources and Conservation**

This performance audit report presents information on the Water Development and Renewable Resource Development Programs administered by the Resource Development Bureau, Department of Natural Resources and Conservation. The purposes of the programs are to promote and advance the beneficial use of water and to develop renewable natural resources. The report contains recommendations for improvements to the administration of the programs and funding limits. The recommendations address monitoring projects, improvements in the administration of the Water Development Private Loan Program, and improvement of management controls.

**COMMITTEE ON POSTSECONDARY EDUCATION  
POLICY AND BUDGET**

Committee Hears Report on UM Negotiations...The Committee on Postsecondary Education Policy and Budget met on June 27 in the State Capitol in Helena. Committee member Pat Haffey gave the Committee an update on the negotiations between the Governor's Office and the University Teachers' Union (UTU) at the University of Montana - Missoula.

Committee Receives MUS Restructuring Update...Dr. Jeff Baker, Commissioner of Higher Education, gave the Committee an update on the Montana University System (MUS) restructuring project. Dr. Baker stated that three things set the tone for restructuring: communication flow and information technology; task orientation; and delivery of service. Essentially, a more efficient communication flow is utilized to focus resources more efficiently to address tasks and improve the delivery of service.

Dr. Baker also summarized a number of projects that have been undertaken, including:

- academic program review;
- utilization of bonding resources;
- establishment of steering committees/councils to define the role of the MUS in Helena and Great Falls and to coordinate two and four year education;
- examination of enrollment projections and long-range goals;
- examination of potential accountability measures;

- establishment of a task force to examine coordination of information technology; and
- coordination with the community colleges to examine how to more fully incorporate those units into the MUS.

Committee discussion primarily focused on the role of the community colleges, and potential assumption of governance by the state. As a result of Committee discussion, Dr. Baker indicated that the MUS would examine alternatives to governance assumption by the state.

Committee Hears MUS Funding Proposal...The Committee heard a report from staff on the funding methodology proposed by the MUS. This methodology (which will be included in the executive budget for the 1997 biennium) takes as its precept that management flexibility is the best way to ensure an "appropriate" balance of access, quality, and price. The Legislature would focus on agreed-upon outputs, or accountability measures, to gauge MUS performance. Under this methodology, the Legislature would determine the number of resident and Western Undergraduate Exchange (WUE) students it will support and the total general fund and millage appropriated to provide that support. State support would be provided through the issuance of "warrants" to resident and WUE students to offset a portion of the total costs of attending the MUS. The Legislature would not determine the number of nonresident students (who would pay full cost). Consequently, nonresident students (and the resulting tuition collections) would be an MUS management tool. Because the Legislature would determine state support for residents and WUE students only, the Legislature would no longer appropriate tuition. Total tuition charges and resulting collections would be a further management tool.

The Committee agreed to examine the proposal further, and asked the Office of the Commissioner of Higher Education (CHE) to present information at its next meeting on a number of items relating to the implementation of the proposal, including:

- what the "billing" statement to the student will look like;
- how the number of resident students will be estimated;
- how high cost programs will be determined and costed;
- how unit capacity will be determined;
- what accountability measures might be used; and
- how cost of education will be determined.

The Committee will use the information provided to begin more detailed discussion of the specifics of how the methodology would be implemented. The Committee also discussed the methodology in the context of a recent opinion by the Code Commissioner of the State of Montana that questioned whether the Legislature has constitutional authority to appropriate tuition. Because the lack of a legislative

appropriation of tuition is a major facet of the proposed methodology, the Committee voted to request an opinion clarifying this issue from the Attorney General.

To Meet Again in September...The next meeting of the Committee is scheduled for Friday, September 30, in the Capitol.

## SUBCOMMITTEE ON SCHOOL REVENUE

Subcommittee Holds Third Meeting...The Subcommittee on School Revenue held its third meeting of the interim on Friday June 3 in Helena. The discussion centered on the following reports and data: a report on school expenditure disparity ratios by Jim Standaert, Office of the Legislative Fiscal Analyst; and a report on equalization of school district revenue when certain nonlevy revenues and centrally-assessed property tax sources are removed as general fund sources, prepared by Madalyn Quinlan, Office of Public Instruction.

The latter report concluded that there is little justification for singling out centrally-assessed property as a cause of disequalization within the Montana school funding system. While there are districts that have greater access to property tax revenues due to the presence of centrally-assessed property, such as utilities, pipelines, and railroads, there are many examples of districts that have greater access to property tax revenues from other types of property, such as industrial property, equipment and machinery, or agricultural lands that support small student populations. At one extreme, the removal of centrally-assessed property would reduce the access of some high-wealth district to those traditional sources of revenue; however, many low-wealth districts, such as those with much federal land and some centrally-assessed utility lines, would see their tax bases eroded as well. The report also analyzed the correlation between access to nonlevy revenue and higher general fund expenditures. Nonlevy revenue accounts for only 8 percent of the funding available for district general fund budgets, but in individual districts, nonlevy revenue funded from zero to 63 percent of district general fund budgets. In short, the greater the access of a district to nonlevy revenue, the more likely that district is to be spending in excess of that district's equalized budget range.

Subcommittee Recommends No Changes to School Funding...After a lengthy discussion of the reports and testimony by educators and county officials, the Committee agreed to recommend to the 54th Legislature that no action be taken with regard to changing school district access to nonlevy revenue and centrally-assessed property, as the significant changes

in school funding over the past four years and the lack of consistent data makes it difficult to judge how well the state is doing with school funding equalization at this time. The Committee agreed to meet in conjunction with the Legislative Finance Committee near the commencement of the 1995 Session in order to review school funding revenue projections and any other pending education finance concerns.

## COMMITTEE ON CHILDREN AND FAMILIES

Committee Meets in June...The Committee on Children and Families held its fourth meeting of the interim on Friday, June 24 in Helena. The morning agenda included the following:

- an update on the W.K. Kellogg grant to the Montana Post Adoption Center to study improvements in the state's foster care and adoption services and policies;
- Department of Family Services (DFS) plans for the coming biennium and the work of the state and local family services advisory Councils;
- an update on the progress of the Interagency Coordinating Council (ICC) toward a coordinated plan for delivering all state prevention programs;
- report by Elizabeth Roeth, Healthy Mothers/Healthy Babies, on the results of the Montana Kids Count Data for each county; and
- a presentation on the new family centers within three Great Falls School District elementary school buildings.

The Committee also learned of the partnership between DFS and the Department of Social and Rehabilitation Services to provide a seamless system of state-assisted child care and referral networks for parents who are in job training or educational programs, for parents who are leaving public assistance for the world of work, and for other low-income families who may be deterred from relying on AFDC if they have some level of assistance with child care.

Committee Considers Issues and Options...The afternoon of the meeting was devoted to using a staff workpaper to review all the issues before the Committee and to begin prioritizing issues for further

investigation or for development into recommendations or legislation. The Committee discussed issues and options in the following areas: prevention programs generally; interagency coordination; confidentiality provisions for child placement and information sharing teams; child abuse and child protective services; family support and preservation programs; early intervention issues, including programs for teen parents; child care issues, especially as related to welfare reform and general availability; reforms in foster care and permanency planning; children's mental health services; and adult protective services.

As a result of the prioritizing session, the Committee has narrowed their agenda to the following:

- further investigation into ways to enhance or combine the various local interagency teams that exist for information sharing, for placement of children, or for foster care review;
- continued tracking of the ICC state prevention plan;
- drafting legislation that would reauthorize the Committee on Children and Families;
- drafting legislation to add the Commissioner of Labor as a member of the ICC; and
- further investigation into methods of assuring adequate checks and balances in state policies on child and adult protective services.

The Committee will also be developing language for the final report that complements and encourages the following state agency initiatives: programs for families at risk of losing or abusing their children; building community family support networks; early intervention services for maternal and child health; and home visiting programs that encourage healthy family development and parenting skills.

To Meet Again in August...The next meeting is planned for Friday, August 12. Interested parties may request a copy of the issues and options workpaper and a staff report entitled, "Advisory Councils, Placement Teams, and Interagency Collaboration: Mechanisms for the Execution of Family Policies in Montana" from the Legislative Council.

## ENVIRONMENTAL QUALITY COUNCIL

EQC Has Summer Intern... The Environmental Quality Council is happy to announce the addition of a summer intern - Roger Sagal. Roger is a third year law student at Tulane University, New Orleans, LA. He is currently providing valuable assistance on a number of Council projects, including the Hazardous Waste Management Study and the Council's look at agency regulatory enforcement. Roger's work with the Council is sponsored by a grant from the Public Interest Law Foundation.

EQC Receives Energy Award... The Council is also very proud to announce that Executive Director, Deborah B. Schmidt and Staff Resource Scientist, Paul Sihler, have both received a U.S. Department of Energy - 1994 National Energy Award for achievement in the area of Building Technology. Deborah and Paul were recognized along with the other members of the Council-sponsored Residential Energy Efficiency Collaborative.

EQC Meets in June... The Council met on Monday, June 20. A number of items were on the agenda.

Hazardous Waste Management Study... The Council's Hazardous Waste Management Working Group met on June 29 to consider several possible options for making proper disposal of hazardous waste easier and more cost-effective for small generators. Options being considered include: limiting the liability of local governments that establish hazardous waste collection programs; solidifying funding for the MSU Extension Service's pollution prevention program; and, expanding the existing tax credit for capital investment in recycling to also include capital investments in waste reduction or reuse. The working group also heard about the efforts of large generators in Montana to reduce the amount of hazardous waste they generate.

SJR 29 Nondegradation Study... The Joint EQC/WPC Subcommittee met Monday, June 13. The Subcommittee continued its analysis of mandatory mitigation and mitigation banking, and took an initial look at the unquantified impacts of self-determinations of nonsignificance. The Subcommittee decided a recommendation regarding the unquantified impacts of self-determinations of nonsignificance was not feasible at this time. The Subcommittee believes that the DHES understands the nature of the problem and will attempt to address it, given available resources.

The Subcommittee also brought the mandatory mitigation banking issue to the full Council for discussion. After lengthy and lively discussion, the Council decided that a recommendation at this time was premature. The

Council stated that agency rules should be adopted and fully implemented before further action is taken on this topic.

The Council will address the final Study issue - the constitutional implications of the new nondegradation policy - at the meeting following the August meeting.

Regulatory Enforcement...At its May meeting the Council decided to study the issue of environmental and natural resource regulatory enforcement and compliance. The Council appointed a subcommittee to review the existing enforcement policies of state environmental and natural resource programs and their implementation. The Subcommittee consists of Co-Chairs Senators Doherty and Grosfield, public members Bob Boeh, Jeanne-Marie Souvigney, and Greg Tollefson, and the Governor's representative, Glenn Marx. The Council also asked the Subcommittee to begin assessing the level of compliance and whether enforcement is critical to achieving statutory environmental and natural resource goals. The Subcommittee is to report to the full Council at its August meeting.

Environmental Indicators...Council staff provided a brief review and update on the need for and feasibility of a state-wide Environmental Indicators Project. In general, an indicators project serves to identify state environmental trends and the resulting resources at risk. This allows state and local governments to prioritize their workloads to increase the efficiency and effectiveness of environmental programs. While the exact goals, nature, framework, time frame, and funding of the project have yet to be developed, the Council supported the staff's work on this project and agreed that the next step should be to brief the Governor's Natural Resources Sub-Cabinet on the project and discuss the Executive branch's potential involvement. Staff will report to the Council in August regarding the briefing.

Other Issues...Other agenda items included a report by the Lead Abatement Council; a staff report by the Collaborative Working Group on transportation energy policy development; a staff-facilitated Council discussion on MEPA and the environmental review alternatives analysis; and a discussion regarding the funding problems for the Ground Water Characterization and Assessment Program.

To Meet Again in August...The next Council meeting will begin at 8:30 a.m., Wednesday, August 24 in Room 104 of the State Capitol. Details of this meeting will be published in the August *INTERIM*.

For more information on these issues, please contact the EQC staff at 444-3742.

## REVENUE OVERSIGHT COMMITTEE

Special Improvement District Financing Subcommittee Meets...The Subcommittee created to examine the financing of special improvement districts held its second meeting May 26. As was the case at the first meeting, the Subcommittee conducted a round table discussion with interested parties (bond counsel, bond underwriters, local and state government officials, and representatives of both sides of the Carbon County case) on the issues regarding the financing of special improvement districts.

At the first meeting, a secondary issue was raised on whether the redemption period from a property tax lien for delinquent property taxes and delinquent special improvement district assessments should be shortened and whether there should be separate redemption periods for delinquent taxes and assessments. Stan Hughes, Gallatin County Treasurer, said that while shortening the redemption period may have some merit, it would be a mistake to establish separate redemption periods. He suggested reviewing other states' laws for ways to improve the tax sale process. The Subcommittee agreed but indicated that the review should not be part of any proposal dealing with special improvement district financing.

Lee Heiman, staff attorney, informed the Subcommittee that the Montana Supreme Court reversed and remanded the Carbon County case to District Court. The Supreme Court ruled that the County has a contractual obligation to honor the covenants of the revolving fund pledge. The effect of the decision is that a bond issuer may be required to make loans from the revolving fund indefinitely if the district becomes insolvent. Despite the Supreme Court decision, the Subcommittee and other participants believed that the special improvement district financing laws should be modified to avoid situations similar to Carbon County.

To that end, Mae Nan Ellingson, Dorsey & Whitney, presented a proposal developed by local government finance officers, bond counsel, and bond underwriters. The proposal, drawing in part from the provisions of Senate Bill No. 426, would require governing bodies to consider a number of factors, including the financial condition of the improvement district and diversity of ownership within the district, before issuing special improvement district bonds. The proposal included measures for providing additional security for bond issues. These would include a mandatory deposit in the revolving fund of 5 percent of the bond proceeds, the option to establish a district reserve fund, and an additional interest rate charge on assessments over the rate of interest on the bonds. The proposal also recommended limiting the period of time in which the revolving fund is required to make loans to a district. The Subcommittee was generally receptive to the proposal except on the issue of the termination of the revolving fund obligation and on the issue of

an insolvent district. The Subcommittee will consider refinements to the proposal at the July 28 meeting.

Committee Discusses Agricultural Land Property Tax Issues...The full Revenue Oversight Committee met on May 27. Rep. Chase Hibbard reported on the activities of the Agricultural Advisory Committee. The Advisory Committee was appointed by the Governor, as required in Senate Bill No. 168 (the 1993 Regular Session bill that revised the taxation of agricultural land), to review water costs, crop share arrangements, and other issues related to the valuation of agricultural land. Rep. Hibbard said the Advisory Committee has focused primarily on water costs and crop share arrangements. The Advisory Committee may make recommendations that would change the determination of water costs and revise the capitalization rate. Although the Advisory Committee has not yet reached consensus, it is required to make recommendations to the Department of Revenue by July 1994.

The 1993 Legislature also revised the eligibility requirements to qualify as agricultural land (HB 643). Previously, land in excess of 20 acres automatically qualified as agricultural land as long as it was not devoted to a residential, commercial, or industrial use. Now land must be in excess of 160 acres to qualify. The owner of land that is between 20 and 160 acres must demonstrate that the land is used for agricultural purposes. Randy Wilke, Property Assessment Division of the Department of Revenue, presented a report summarizing the implementation of the new law. The report described the procedures for combining acreage and income under one ownership and discussed the treatment of one acre farmsteads and leased lands.

Committee Hears Revenue Report...Terry Johnson, Office of Legislative Fiscal Analyst, presented a report on year-to-date revenue collections deposited in the general fund and the school equalization account. Individual and corporation income taxes, investment earnings, and statewide property taxes account for about 79 percent of total collections. Mr. Johnson said, based on collection data through May 25, 1994, that actual revenue should exceed House Joint Resolution No. 2 estimates (1993 November Special Session revenue estimating resolution). The extent of the excess depends primarily on the level of individual income tax refunds through the end of the fiscal year.

Staff Presents Tax Expenditure Report...Staff presented a report that summarized the significant features of tax expenditure reports prepared by Arizona, California, Delaware, Idaho, Louisiana, Maine, Michigan, New York, North Carolina, and Washington. Based on the review of these states, there is no general consensus of what constitutes tax expenditures at the state level. For example, some states provide estimates of "passive" tax expenditures (tax expenditures resulting from conformity to federal income tax laws) while others do not. The period of reporting

tax expenditures also varies considerably among the states. The report noted that few state legislatures undertake an in-depth review of tax expenditures. For a copy of the report, contact Jeff Martin at the Legislative Council, 444-3064.

Committee Considers Other Business...Patrick Montalban, Mountain States Resources, Inc., presented information on the financial hardship facing stripper oil producers. According to Mr. Montalban, the viability of small producers may depend on a tax reduction for stripper oil.

Jeff Miller, Income Tax Division, Department of Revenue, described how income tax returns are processed by the Department. Mr. Miller said the Department can issue income tax refunds within six to eight weeks for returns filed before April 15. After that date, it generally takes 10 to 12 weeks to issue refunds.

Stan Nicholson, Project Director, described the activities of the Montana Fiscal Forums. The purpose of the fiscal forums project, funded by a grant from the Northwest Area Foundation, is to provide citizens with objective information about the way state and local governments raise revenue and make expenditures. Nine communities throughout the state are currently participating in the fiscal forums project.

Committee and Subcommittee to Meet in July...The Revenue Oversight Committee will meet Friday, July 29, at 9:00 a.m. in Room 104 of the Capitol. The SID study subcommittee will meet Thursday, July 28, at 1:00 p.m. (time subject to change) in Room 104.

## LEGISLATIVE COUNCIL

Council Meets to Discuss Variety of Issues...The Legislative Council met June 23 to discuss a wide range of issues related to improvement of the legislative institution, the interim study process, and the mission, goals, and objectives of the Council itself.

NCSL recently published a booklet prepared by the Legislative Institution Task Force on Strengthening State Legislatures that served as a basis for the legislative institution discussion. Many of the recommendations for improvement reflect practices already well developed in Montana. Among those not so well developed that the Council chose to pursue were:

- development of model curricula and information packets on Montana government and the Legislature in particular to help focus instruction on Montana specific material;

- improving and expanding on legislative reports and action summaries that are prepared following a session; and
- expanding the discussions of legislative ethics in training and orientation sessions, the Legislator's Handbook, and with illustrative examples to guide members. Develop a disclosure form to help members follow Joint Rule 10-60.

In addition, a number of rules were identified that need to be updated to conform with recent statutory changes.

Council Considers Changes to Interim Study Process...The Research Division staff worked with the Council to propose a number of prospects for improvement of the interim study process, including a number of specific recommendations under the following broad issue areas:

- reform the process of setting interim study priorities and involve the leadership more in that process;
- improve ways to develop and select interim studies;
- enhance the interim study process; and
- enhance the flexibility of the Council and its management to allocate resources.

The Council chose to pursue nearly all of the recommendations further in the coming months. Legislators and others interested in reading further about these issues may obtain a copy of "Assessing the Interim Study Process: Prospects for Improvement" prepared by the Research Division Staff.

Council Reviews Goals and Objectives...Finally, the Council briefly reviewed the goals and objectives of the agency and made the following specific recommendations:

- Include the Council of State Governments and NCSL in the budget for the next biennium at the traditional level of 8 legislative members, six annual meetings, and dues payments.
- Do not include funding for the Five-State Legislative Conference.
- Include a budget for the Montana-Western Canadian Provinces Boundary Advisory Committee sufficient to meet with Alberta twice a biennium and reintroduce the bill to restrict the committee responsibilities to dealing with Alberta.

- Include a budget for Pacific Northwest Economic Region activities.
- Retain the budget for the National Conference of Commissioners on Uniform State Laws.
- Modify the traditional approach to conducting interim studies.

These interim activities are statutory responsibilities of the Legislative Council that get a great deal of legislative scrutiny and, in recent years, reduction in the appropriations process. The responsibility remains even if the budgets do not.

To Meet Again in August...The Council will meet again on August 24 to give final consideration to its biennial budget submission and to conduct other business.

Kumamoto Legislative Visit Set...A legislative delegation from Montana's Japanese sister state, Kumamoto, will visit Montana from July 10 through 12. On July 12 the delegation will visit the Capitol and visit the chambers. The Kumamoto Assembly has regularly sent delegations to visit Montana since the establishment of the sister state relationship. Earlier visits included Gov. Hosakawa who recently served as prime minister of Japan. The present delegation will be led by the assembly speaker. Legislators interested in meeting with the delegation should contact Dave Bohyer at 444-3064 to discuss the visit.

#### LEGAL DIVISION

Training Activities...The Legal Division in conjunction with the Research Division is conducting individualized Bill Drafting classes for each executive branch agency. The classes cover the automated bill drafting system available to state agencies on the CD-ROM version of the Montana Code Annotated and also focus on the particularized concerns of each agency. The reaction to the classes has been overwhelmingly positive.

The Legal Division is also approximately halfway through with CLE classes for state government. In response to restricted budgets and in order to provide meaningful continuing education for public sector employees, the Legal Division is presenting a series of seminars on a variety of issues. The July 7 seminar will be conducted in two parts and will focus on the advisability of a battered woman syndrome defense and on legislative intent.

## LEGISLATIVE FINANCE COMMITTEE

Committee Meets in Early June...The Legislative Finance Committee met in Helena on June 9 and 10 to hear a number of reports, and took action on a number of issues.

Budget Amendments...The Committee reviewed 25 budget amendment requests, adding \$5.9 million spending authority and 6.3 FTE, and voted that all of the requests met the statutory criteria. The budget amendments include \$0.1 million state special, \$2.5 million federal, \$0.3 million proprietary, and \$3.0 million university current unrestricted fund spending authority. To date this biennium, the budget amendments for the 1995 biennium reviewed by the Committee, plus those approved in House Bill 4 in the 1993 session, total \$20.3 million and 29.9 FTE.

Private Funds...The Committee reviewed two private fund requests, adding \$340,000 spending authority for the Health Care Authority, and voted that the requests met the statutory criteria.

Appropriation Transfers...The Committee reviewed 7 appropriation transfer requests totalling \$1.9 million from fiscal 1995 to fiscal 1994. The Committee found all proposed supplemental appropriation requests were in compliance with statutory criteria.

General Fund Revenue Update...The Committee heard a staff report on the status of general fund collections to date compared to projections. At present, all general fund revenue sources combined, with the exception of individual income tax, should meet or slightly exceed the HJR 2 estimates. Individual income tax collections, however, are exceeding projections. The reasons are unclear, and the extent of the excess primarily depends on remaining income tax refunds to be issued by the Department of Revenue. There is a possibility that total general fund revenues will exceed HJR 2 estimates by \$15 to \$30 million for the biennium.

Montana Science and Technology Alliance Update - The LFA staff presented an update on the investments of the MSTA and raised issues regarding MSTA management interpretation of new legislation. The MSTA is currently depositing earnings from investments into its operating fund state special revenue account. The Committee voted to request an Attorney General's opinion to determine if the earnings from funds invested by the Board of Investments can be deposited to the account to pay MSTA administrative costs. The Committee also voted to request an examination of compliance with employee conduct statutes with regard to the employment of the former Executive Director of MSTA with a

seed capital company that received significant loans from MSTA while he was director.

Human Service Provider Rates...The Committee heard a report on the status of a study on development of a budget methodology for human service provider rates. Although the methodology cannot be developed in time to use for the 1997 biennium budget proposals, the Committee elected to have staff continue to coordinate development of a present law budget methodology for rates paid to non-Medicaid human service providers, and to present the proposal to the Human Services Appropriation Subcommittee during the 1995 Session.

University Tuition Appropriation Authority...A recent opinion by the Code Commissioner of the State of Montana questioned whether the Legislature has constitutional authority to appropriate university tuition. The Legislature has historically directly appropriated all anticipated tuition revenues. The Montana University System has proposed a new funding methodology to the 1995 Legislature that includes as an integral part of the mechanism that the Legislature would no longer appropriate tuition. The Committee voted to invite the Board of Regents to participate in a subcommittee comprised of two members of the Legislative Finance Committee and two members of the Board of Regents to seek a mutual agreement on the issue of tuition appropriation authority. If the Committee cannot reach a solution to the issue by October 1, an Attorney General's opinion is to be requested.

Budget Development Process Update...House Bill 7, enacted by the Legislature in the November 1993 special session, requires significant changes in the budget process. The Committee heard a staff report on the current status of the budget development process and the impacts of the new budget procedures on the legislative budget review process. The most significant changes to the review process discussed by the Committee were as follows:

- The comparison of present law adjustments will be based on differences from the level authorized by the Legislature in the previous biennium. This differs from the past practice of using "current level" as the base for comparing adjustments to the new budget. The new method of comparison will reflect increases in appropriations over a base year that is two to three years past.
- The Legislature will be provided only the executive present law budget. The LFA will not present a separate present law budget as in the past, but will instead provide an analysis of the executive present law budget. The focus of

the LFA analysis will shift to executive new proposals, major policy issues, and budget issues developed by the LFA staff.

- The Legislature will be provided an explanation of present law adjustments in a manner that allows the Legislature to review and act on those adjustments, using the base budget as a starting point for legislative review as opposed to present law or "current level". Using the base budget as the starting point would mean an additional level of budget review that has not been addressed by the Legislature in any detail in past bienniums, and could add a significant workload on appropriations committees. However, many present law adjustments would be global in nature.

The Committee directed staff to work with legislative and appropriations leadership to develop a procedure for working with global budget issues in the early stages of the legislative session.

Performance-Based Budgeting Pilot Project Update...The Committee heard a report by the Office of Budget and Program Planning on the progress of a performance-based budgeting pilot project recommended by the 1993 Legislature in House Bill 2. The pilot project includes programs in three general government agencies to date. The budget presentations for these programs will focus on program goals, objectives, and key performance measures. Changes from the present law base will be explained in terms of program/service outcomes.

LFC to Meet Again in September...The Committee set September 8 and 9 as the dates for the next LFC meeting.

SB 378 Subcommittee Meets...The LFC Subcommittee for Review of Dedicated Revenue Provisions and Statutory Appropriations held its third meeting, on June 9. Members were provided with:

- information on 133 state special revenue accounts categorized into six categories;
- answers to specific questions raised on the previous 170 accounts reviewed at the March meeting;
- an analysis of three accounts that commingle constitutionally mandated state special revenue with other revenue;
- information on accounts that receive revenue from a general source such as taxes, fines and forfeitures, interest, and investment earnings;

- a detailed history and current allocation of four taxes, including the gasoline dealers' license tax, lodging facilities use tax, coal severance tax, and property tax;
- possible Subcommittee actions and options for drafting committee bills; and
- a listing of statutory appropriations and possible criteria for their review.

The Subcommittee has now reviewed all 303 accounts. The next meeting, tentatively scheduled for July 29, will focus on:

- categories to exempt from future SB 378 review;
- options for de-earmarking general revenue sources;
- prioritization of programs funded with general revenue sources;
- options for drafting committee bills;
- options for handling commingling of constitutionally mandated revenue with other revenue;
- clean-up legislation on the gasoline dealers' license tax, lodging facility use tax, and the coal severance tax; and
- a review of statutory appropriations.

The Subcommittee's recommendations will be presented to the Legislative Finance Committee at the September 8-9 meeting.

## JUDICIAL UNIFICATION AND FINANCE COMMISSION

Commission to Hold Public Hearing...The Judicial Unification and Finance Commission will hold a public hearing on Wednesday, July 13 in Room 325 of the Capitol. The Commission will take testimony on its preliminary recommendations concerning court administration, court funding, and court fees. For further information regarding the recommendations or the public hearing, contact Sheri Heffelfinger at the Legislative Council, 444-3084.

## THE BACK PAGE

There is a commonly held perception that government spending is increasing rapidly, while at the same time, the quantity and quality of public sector services is declining. The "reinvention of government" movement has gained recent public support as an alternative to raising taxes in balancing state and local government budgets. This movement calls for the reexamination of the basic principles of public management and for a rethinking of the conventional ways by which government provides services to its citizens.

While most of the focus of the reinvention movement has been centered on the executive and legislative branches of government, this does not mean that the judiciary is immune to review. This month's "The Back Page" focuses on judicial reform in Montana.

### REINVENTING JUSTICE

by Sheri Heffelfinger

Most people never see the inside of a court room unless they dispute a traffic ticket or get selected for jury duty. To the rest of us, "court room" evokes images of the TV sitcom "Night Court" or of a field trip with our sixth grade civics class. What we all appreciate though, is that courts are part of the judicial branch, the least understood third branch of government that aspires to institutionalize one of the highest ideals of our American Republic, equal justice for all. But today, fiscal pressures that result in inequitable or insufficient court funding at the local level means that, to ensure equal justice for all, the Legislature will need to become more involved in the administration and financing of Montana's court system.

Just as there is a clamor to reinvent executive branch agencies, so the reformation of judicial administration is becoming a cause de celebre in judicial circles. The courts, like the executive branch, are also being asked to do more with less. In response, nearly two-thirds of the states have embarked on a process for long-term strategic planning to reform their courts over the next 30 years.

Not that judicial reform is a new idea. In fact, reinvention of the judiciary has been a long and slow process, so long and slow that Chief Justice Arthur Vanderbilt once cautioned that "Judicial reform is not a sport for the short-winded." As early as 1906, American jurist and

educator Roscoe Pound charged that there were too many courts, a needless overlapping of jurisdictions, and a waste of judicial manpower. He called for a simplified trial court structure, a centralized administration, and a uniform method of paying supervising personnel. But, the judiciary is inherently a conservative institution, and the fundamental changes envisioned by Roscoe Pound have yet to be widely realized or even accepted.

In Montana, calls for judicial reformation began almost with the establishment of state courts. Yet, despite numerous reform studies, the judicial article of the Montana Constitution remains much the same as when first set forth in the 1889 Constitution. Article VII, section 1, of the Montana Constitution vests the judicial power of the state in "one Supreme Court, district courts, justice courts, and such other courts as may be provided by law." The Legislature has provided for 21 judicial districts with 37 district judges and there is at least one justice of the peace court in each county. (There may be up to two.) The Legislature has further provided for city and municipal courts. Montana has 101 city courts and one municipal court in Missoula. There are two special courts, a Water Court and a Workers' Compensation Court. Jurisdictional boundaries, which overlap significantly, are defined by constitutional and statutory provisions.

The State Constitution gives the State Supreme Court "general supervisory control over all other courts." In 1977, the Montana Legislature provided for the Office of Supreme Court Administrator to assist the Supreme Court in fulfilling its supervisory role. Several other boards and commissions created by the Supreme Court also assist in the supervisory function.

For the most part, however, Montana's courts are independent and autonomous since nearly all judges are elected. (City judges may be appointed in some cases.) District judges may appoint, within budgetary constraints, court reporters, secretaries, law clerks, and juvenile probation officers. Clerks of district court are elected in each county and may hire their own assistants.

As with any effort to improve government, improving the Montana judiciary will also involve getting the most for taxpayer dollars. Currently, counties may fund their portion of district court costs through a 4-, 5-, or 6-mill property tax levy, depending on a county's classification. (See section 7-6-2511, MCA.) Counties may also elect to impose a tax of up to 0.5% on light vehicles. The intent of the Legislature in providing this optional tax was to provide a supplemental source of funding for district courts. But counties can, and most do, use the revenue to fund other county programs. (See section 61-3-507, MCA.) The per capita tax

burden for district court funding varies significantly county by county. Total county expenditures on district courts add up to about \$20 million.

Salaries and expenses of district court judges are paid from the Supreme Court's \$5 million general fund budget. The state also reimburses counties for certain costs in criminal cases: court reporter salaries, transcripts, witness and jury fees, indigent defense, expenses for appellate defense, and psychiatric examinations. (See section 3-5-901, MCA.) Money for reimbursing these expenses is statutorily appropriated to the Supreme Court from 7 percent of the 2 percent light vehicle tax, provided for in section 61-3-509, MCA, which raises about \$3 million annually.

Little centralized supervisory authority over court staff and the mix of state and county funding has resulted in a fragmented system of judicial administration and budgeting.

In keeping with current trends and in response to the need to reassess how resources are allocated, the Judicial Unification and Finance Commission, an interim study committee established by the 1993 Legislature, is working on recommendations that will, if approved, provide long-term strategic planning for Montana's judiciary on a statewide basis. The vision developed as a result will be crucial to carrying the judiciary into the next century.

While reform of judicial administration clearly falls under the domain of the Supreme Court and the judicial branch, the bill will still be paid by taxpayers. If funding responsibilities continue to shift from the counties to the state, legislative leaders will be further challenged to identify appropriate and adequate funding sources for the judiciary; to watchdog the use of the funds; and to explain how, why, and for what taxpayers are paying. Getting to see the inside of a court room takes on a whole new perspective. But gaining an understanding of how that court room is run and finding ways of reinventing the delivery of justice may be the biggest challenge of all.



## **INTERIM CALENDAR**

### **JULY**

July 4, Independence Day, holiday

July 13, Judicial Unification and Finance Commission, Public hearing, Room 325, 10:00 a.m.

July 15, Subcommittee on Workers' Compensation Alternatives, Room 104, 8:00 a.m.

July 16, Subcommittee on Workers' Compensation Alternatives, Room 104, Time to be announced.

July 18, State Housing Task Force, Room C-209, Cogswell Building, 9:00 a.m.

July 28, Revenue Oversight Committee Subcommittee on Special Improvement District Financing, Room 104, 1:00 p.m. (time subject to change)

July 29, Revenue Oversight Committee, Room 104, 9:00 a.m.

July 29, Legislative Finance Committee Subcommittee on Review of Dedicated Revenue Provisions and Statutory Appropriations, Room 108, 9:00 a.m.

### **AUGUST**

August 12, Committee on Children and Families

August 18, Water Policy Committee, Room 104

August 19, Water Policy Committee, tour of Big Hole River Basin

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August 24, Environmental Quality Council, Room 104, 8:30 a.m.

August 24, Legislative Council

**SEPTEMBER**

September 5, Labor Day, holiday

September 8 and 9, Legislative Finance Committee, Room 104

September 23, Revenue Oversight Committee, Room 104

September 30, Committee on Postsecondary Education Policy and Budget

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